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RIGHTS OF THE CHILD

Question of a draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

Report of the working group on its sixth session

Chairman-Rapporteur: Mr. Iván Mora Godoy (Cuba)

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Introduction

1. The Commission on Human Rights, in paragraph 13 (b) (ii) of its resolution 1999/80, requested its open-ended inter-sessional working group on a draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography to meet early in 2000 in order to make further progress with the aim of finalizing its work before the tenth anniversary of the entry into force of the Convention, and to report to the Commission at its fifty-sixth session.

2. The Economic and Social Council, in its decision 1999/249, authorized the working group to meet for a period of two weeks prior to the fifty-sixth session of the Commission.

I. ORGANIZATION OF THE SESSION

A. Opening and duration of the session

3. The session of the working group was opened by a representative of the High Commissioner for Human Rights, who made a statement. During the session, from 24 January to 4 February 2000, the working group held five meetings in plenary, on 24 and 25 January, 4 February and 23 March 2000.

B. Election of the Chairman-Rapporteur

4. At its first meeting, on 24 January 2000, the working group re-elected Mr. Iván Mora Godoy (Cuba) Chairman-Rapporteur.

C. Organization of work

5. At its first meeting, the Chairman-Rapporteur recalled that opinions on the draft optional protocol had already been expressed by the participants at previous sessions of the working group and that all the positions were very well known. The reports on the first to third sessions (E/CN.4/1995/95, E/CN.4/1996/101 and E/CN.4/1997/97) reflected those views. In accordance with the previous year's practice, his intention was to avoid a general debate and to encourage the working group to concentrate on drafting issues, in order to save time and to be able to respond favourably to the request of the Commission on Human Rights that the drafting of the protocol be concluded before the tenth anniversary of the Convention on the Rights of the Child.

6. The Chairman-Rapporteur proposed that the working group work on the basis of document E/CN.4/2000/WG.14/CRP.2 which contained a Chairman's proposal for the preamble, the outcome of the informal consultations held in November 1999 and all the remaining articles as included in the annex to the report of the working group on its fifth session.

7. The Chairman-Rapporteur also proposed that, as in previous years, work be conducted in an informal drafting group. Some plenary meetings would be held to allow participants to express their opinions on the texts discussed in the meetings of the informal drafting group.

8. Owing to the difficult task the working group would be facing, the Chairman distributed a programme of work for the first week of the session. He suggested that, for each article or group of articles, one delegation would act as coordinator and as moderator of the relevant drafting group. In accordance with that proposal, Brazil coordinated the preambular part, New Zealand coordinated the definition of the sale of children, Argentina coordinated the definition of child prostitution and Canada the definition of child pornography. Chapter II on "penalization, protection of children" was coordinated by the representatives of France. The observers for Egypt and Uruguay respectively coordinated article 8 on compensation and article 9 on international cooperation. The representative of Guatemala coordinated chapter V on the general provisions.

9. The chairman welcomed the Special Rapporteur on the sale of children, child prostitution and child pornography, whose presence during the first week of the session would be essential.

D. Participation

10. The representatives of the following States members of the Commission attended the meetings of the working group, which were open to all members of the Commission: Argentina, Bangladesh, Brazil, Burundi, Canada, Chile, China, Colombia, Cuba, Czech Republic, Ecuador, El Salvador, France, Germany, Guatemala, India, Italy, Japan, Latvia, Madagascar, Mexico, Morocco, Nepal, Norway, Pakistan, Peru, Philippines, Poland, Portugal, Republic of Korea, Russian Federation, Spain, Sudan, Tunisia, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela.

11. The following States non-members of the Commission were represented by observers: Albania, Algeria, Australia, Austria, Belarus, Belgium, Bulgaria, Costa Rica, Croatia, Democratic People's Republic of Korea, Denmark, Dominican Republic, Egypt, Estonia, Finland, Georgia, Haiti, Honduras, Iraq, Israel, Hungary, Jordan, Lithuania, Malaysia, Netherlands, New Zealand, Panama, Slovak Republic, Slovenia, South Africa, Sweden, Syrian Arab Republic, Thailand, Turkey, Ukraine, Uruguay.

12. The following non-member States of the United Nations were also represented by observers: Holy See , Switzerland.

13. The following United Nations body was represented by an observer: United Nations Children's Fund.

14. The following specialized agencies were represented by observers: the International Labour Organization, the United Nations Educational, Scientific and Cultural Organization.

15. The following intergovernmental organization was represented by an observer: League of Arab States.

16. The following non-governmental organizations in consultative status with the Economic and Social Council were represented by observers at the meetings: International Alliance of Women - Equal Rights, Equal Responsibilities, Coalition Against Trafficking in Women,

International Council of Women, International Federation Terre des Hommes, International Federation of Women Lawyers, NGO Group for the Convention on the Rights of the Child - Focal Point on the Sexual Exploitation of Children

E. Documentation

17. The working group had before it the following documents:

E/CN.4/2000/WG.14/1	Provisional agenda
E/CN.4/2000/WG.14/2	Comments on the report of the working group - Note by the Secretary General
E/CN.4/2000/WG.14/CRP.1	Outcome of the informal consultations
E/CN.4/2000/WG.14/CRP.2	Working paper on the draft optional protocol
E/CN.4/1999/74	Report of the working group on its fifth session
E/CN.4/1999/71	Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Mrs. Ofelia Calcetas-Santos
A/51/385	Letter dated 19 September 1996 from the Permanent Representative of Sweden to the United Nations addressed to the Secretary-General, Annex: Declaration and Agenda for action adopted by the Congress against Commercial Sexual Exploitation of Children, Stockholm, from 27 to 31 August 1996

II. GENERAL STATEMENTS

18. At the first meeting of the working group, the representative of Portugal made a statement on behalf of the European Union. He expressed the unequivocal support of the European Union to the Chair of the working group in the ongoing process. He mentioned some of the most recent initiatives taken in the context of the European Union to combat trafficking and child prostitution. With regard to the issue of the definition of the sale of children, which remained one of the more problematic issues as it determined the scope of the protocol, the representative of Portugal stated that, as a clear manifestation of the willingness of the European Union to complete the work of the working group at the earliest possible opportunity, the European Union had revised its position and was ready to consider a definition of the sale of children which would not be limited to the purpose of child sexual exploitation.

19. At the second formal meeting, the representative of the United States of America made a statement in which he expressed the support of his delegation to the Chairman and the wish of his delegation for the completion of its work by the working group. He also expressed the wish

that the present protocol would, like the recently adopted protocol on the involvement of children in armed conflicts, include a provision which would allow States which have not ratified the Convention on the Rights of the Child to be party to the protocol. He recalled that his country was among the very few States which had already ratified the ILO Convention (No. 182) Concerning the Worst Forms of Child Labour.

III. DISCUSSION ON THE DRAFT OPTIONAL PROTOCOL

20. In accordance with the proposal made by the Chairman-Rapporteur at the first plenary meeting, and after having met in an informal drafting group, the working group held a general debate in plenary meetings to enable delegations to present their views and opinions on the draft protocol, as discussed in the drafting group and as annexed to the present report. The present chapter reflects the opinions expressed by some delegations.

21. At the third plenary meeting, the Chairman of the working group introduced a Chairman's paper containing the draft optional protocol and submitted it for the consideration of the delegations. Although called "Chairman's paper", the Chairman pointed out, the text was the outcome of intensive negotiations. He paid tribute to all the participants and in particular to the coordinators of the various articles of the draft protocol. He also drew attention to the fact that, in cases where proposals remained between square brackets at the end of the informal consultations, he had had to make a choice and had either removed the square brackets or deleted the proposals themselves. He also stated that any proposal for a change to the text would not be accepted nor included unless it was accepted by consensus by all participants.

22. With regard to the preparation of the report, it was agreed that it would be prepared by the Chairman and sent to all delegations for their comments before its final adoption in March 2000.

23. With regard to article 2 (c) on the definition of child pornography, the representative of Portugal, on behalf of the European Union, said that the European Union understood the term "any representation" to mean visual representation. In that regard, the representative of Sweden insisted on the importance of that particular issue for her delegation. She also interpreted "any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities" not to be applicable to adults acting, posing or dressing as a child.

24. The representative of Japan explained that, with regard to the definition of child pornography, his delegation understood the term "representation" to mean visual representation. Moreover, for the purpose of the protocol the term "child" was understood as in the definition used in the Convention on the Rights of the Child.

25. Also with regard to the definition of child pornography in article 2, a number of other delegations stated their understanding that the term "any representation, by whatever means" meant visual representations, and that "sexual parts" meant genitalia.

26. The representative of the United States of America stated that reaffirming the importance of mutual legal assistance, to the extent provided for by treaty and domestic law, would help parties ensure that the prosecuting State had access to the evidence it needed of pornography.

The United States understood the definition to include the visual representation of a child, engaged in real or simulated sexual activities, or of the genitalia of a child where the dominant characteristic was depiction for a sexual purpose.

27. The representative of Mexico, strongly supported by the Group of Latin American Countries (GRULAC), in particular the representatives of Argentina, Brazil, Colombia, Cuba, Ecuador, Guatemala and Venezuela and the observer for Uruguay, considered the text of the annex as the closest to compromise. She was of the opinion that even though the various regional groups were all equally unhappy about the text, it represented the minimum common basis and she called for its adoption. All representatives referred to the clear political will demonstrated during the informal consultations and also to the need to take advantage of the momentum achieved to adopt the protocol, bearing in mind the best interests of the child. In that regard, the representative of Argentina and the observer for Uruguay stated that despite their preference for a text with a stronger criminal typification, they would accept the text as it was for the sake of consensus.

28. The delegation of Colombia emphasized that, from a legal standpoint, it was unwise to include in the draft protocol, and in any other instrument of a similar nature, provisions which made the validity of its provisions subject to national legislation if the primacy of treaties that had been or were being signed and ratified was affected thereby.

29. The representative of India recognized that the text submitted was the closest to a consensus and called for its adoption at the present session of the working group. With regard to the preamble, the representative of India drew the attention of the working group to the list of various articles of the Convention on the Rights of the Child in preambular paragraph 1 and to the fact that preambular paragraph 2 reproduced in extenso article 32 of the Convention on the Rights of the Child. He was of the opinion that such a listing and reproduction were not necessary. With regard to article 9, paragraph 2, the representative of India proposed to insert the words "as appropriate" when reference was made to child victims.

30. The representative of China stated that international cooperation and a positive political will had led to the drafting of the text submitted by the Chairman. He agreed with previous speakers who had admitted that, even though the text was not perfect, it reflected consensus, and he called for the adoption of the draft protocol as submitted. However, he insisted on the need for his delegation to have the Chinese version before final adoption of the optional protocol. He expressed his satisfaction at the fact that consensus had allowed the drafting of a text which protected the rights of children by combating the offences listed in the protocol.

31. The representative of the United Kingdom of Great Britain and Northern Ireland, supported by the representative of Canada, acknowledged that the text submitted represented significant progress and could lead to consensus. Moreover, the representative of Canada called for the adoption of the optional protocol as currently drafted as it reflected the expressed will of the international community to put an end to the offences described in the protocol.

32. The representative of France, supported by the representatives of Germany and Portugal as well as the observers for Belgium and the Netherlands, also took the view that the text under consideration reflected the political determination of all delegations, and in particular those of

the Latin American countries, to adopt an optional protocol and it was conducive to a consensus. However, before reaching a final decision, his delegation had to have the French text of the protocol before it. Furthermore, it was unfortunately unable to accept the present wording of article 13 which, in its view, raised a question of principle concerning the opening of an optional protocol for signature by States which had not ratified the Convention itself. That implied further consultations with members of the European Union and other regional groups. That view was shared by the representative of Germany and the observers for Belgium and Denmark.

33. The representative of Portugal and the observer for the Netherlands also considered that there was a need for further consultations on the wording of article 13, in view of the legal implications of that article for other human rights treaties and in order to reach a compromise.

34. In that regard, the representative of Germany recalled the legal principle according to which only States parties to an instrument could be parties to a protocol to that instrument. His delegation was not in a position to accept a second exception - as for the optional protocol on the involvement of children in armed conflicts. That would be a bad precedent. However, his delegation, like the other delegations which shared the same view, was open to dialogue. In order to overcome the problem, he proposed that the optional protocol currently under discussion be called "Optional protocol on the sale of children, child prostitution and child pornography" without reference nor juridical link in its title to the Convention on the Rights of the Child. The text of the optional protocol itself, including all references to the Convention on the Rights of the Child therein, could remain unchanged.

35. The observer for Australia, supported by the representatives of Austria, the Czech Republic, Italy and New Zealand, also acknowledged that the text submitted was leading to consensus. With regard to article 13, they expressed their understanding of the concern expressed by some delegations; however, for the sake of consensus, they could accept the article as currently drafted.

36. Regarding the proposal made by the representative of Germany on the status of the optional protocol, the representative of Guatemala, on behalf of GRULAC, recalled that the mandate of the working group derived from the Commission on Human Rights. Therefore, only the Commission would have the authority to modify it. She did not consider it appropriate to isolate this protocol, whose provisions would need to be considered and followed up by the Committee on the Rights of the Child.

37. The representative of the Russian Federation stated that the text would be acceptable to his delegation, even though he regretted the elimination of the article on reservations and had reservations about article 13. In relation to the German proposal, the representative of the Russian Federation recalled the proposal his delegation had submitted for the consideration of the working group at its previous sessions and to the Commission on Human Rights concerning the need to change the nature and title of the optional protocol, which would become an additional protocol to the Convention on the Rights of the Child. He stated that, if the German proposal was to be considered, the proposal of his delegation should also be considered, as it still stood.

38. With regard to article 13, the representative of Guatemala, supported by the representatives of Argentina, Brazil, Cuba, Colombia, Ecuador, El Salvador, Mexico and Peru recalled that, for the sake of consistency, the same provision should be included in both protocols to the Convention on the Rights of the Child. The inclusion of that provision should not and would not be considered as a bad precedent in international law, bearing in mind the quasi-universal ratification of the Convention on the Rights of the Child and the importance of promoting the best interests of the child by opening up the protocol for ratification by the maximum number of States. The speakers hoped that article 13 would not be an obstacle to the adoption of the protocol, taking into account the progress made and the efforts of all delegations to reach consensus. The latter view was also shared by the observers for Finland and Turkey. The observer for Turkey recalled that the text submitted to the attention of the working group was the result of intensive negotiations and reflected a strong spirit of compromise.

39. The delegation of Colombia had been in favour of the inclusion of the provision enabling States not parties to the Convention to sign and ratify the protocol since, in its view, that was legally feasible in the case of optional or supplementary instruments. However, it considered that a recommendation might well be addressed to the competent body to the effect that, in accordance with the provisions of article 65 of the Statute of the International Court of Justice, the possibility of requesting it for an advisory opinion should be explored in order to fill the existing legal gap.

40. With regard to article 13, the representative of Sweden reiterated the position her delegation had already expressed in the discussion of the other protocol to the Convention on the Rights of the Child, on the involvement of children in armed conflicts, that a State not party to the Convention on the Rights of the Child should be allowed to ratify the protocol. It was the understanding of her delegation that any State ratifying the protocol would abide by the basic rules and principles embodied in the mother convention in its implementation of the protocol.

41. The delegation of Uruguay wished to afford a higher degree of protection to children by criminalizing at least some forms of behaviour, drawing up a specific though open-ended list thereof. In order to ensure the highest degree of protection possible at international level, it would be appropriate and essential to institute prosecution of those forms of behaviour on as broad a base as possible by the States party to the protocol.

42. The representative of the United States stated that he would be pleased to join consensus on the draft protocol. He believed that the protocol provided important and practical law-enforcement tools and cooperation mechanisms that would help guarantee that offenders would not go unpunished. Its extradition and jurisdiction provisions ensured that offenders could be prosecuted, regardless of where they were found. With regard to the concerns expressed by some countries about allowing the United States to become a party to the protocol without being party to the underlying convention, the United States delegation believed there was, in fact, no substantive or relevant legal problem that would stand in the way. The United States delegation felt it was particularly important to achieve the widest possible acceptance for the protocol, to make it clear that it spoke for the whole of the world community and to ensure that the offences covered by the protocol could be effectively prosecuted worldwide. The United States looked forward to working with all of its partners to achieve the common objective: elimination of the sexual exploitation of children.

43. With regard to the German proposal, the representative of the International Council of Women said that the protocol should be linked to the Convention on the Rights of the Child. She recalled that the rights of the child were indivisible and that the best interest of the child would be the ratification of the Convention on the Rights of the Child and its protocols.

44. The representative of Norway was ready to join the consensus, even though she would have been more favourable to a wider definition of the sale of children and wider provisions. She also underlined that Norway would have preferred to see included an article stating that no reservations to the protocol should be permitted.

45. The representative of Sweden admitted that her delegation still had difficulties with the text of the draft protocol as submitted. She would have favoured clearer and stronger definitions and penalization and a wider jurisdiction. In her view, the articles on extradition and prosecution were not protective enough of the rights of children. She expressed her reservation regarding article 13, but was ready to join the consensus on the text as currently drafted.

46. With regard to the penalization of the sale of children, the representative of Japan expressed her concern at the ambiguity of the purposes listed in the provision, especially forced labour. She recalled that the definition of forced labour was not clear in the protocol, and that the ILO Convention which was mentioned in regard to the protocol did not provide the basis for defining that term because it provided no explicit definition of it. Therefore, Japan understood that forced labour could be defined by each State in a reasonable way. Furthermore, with respect to the adoption of article 3 (1) (a) (ii), the representative of Japan was of the understanding that the mention of "applicable international legal instruments on adoption" referred to the Hague Convention on intercountry adoption. As Japan was not a party to that instrument, it would not feel bound to penalize the act described in that article. Finally, regarding the penalization of child pornography as provided for in article 3 (1) (c), the representative of Japan reiterated the position of her delegation that the possession of pornographic material should be penalized when its purpose was distribution. In order to seek consistency in the penalization of possession, Japan understood that it could punish activities such as importing and exporting such material depending on the offender's purpose or the nature of the activity, in a reasonable way.

47. With regard to adoptions, the United States understood the term "improperly inducing consent" in article 3 (1) (a) (ii) to mean knowingly and wilfully inducing consent by offering or giving compensation for the relinquishment of parental right. The United States further understood the reference to applicable international legal instruments on adoption to mean the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption.

48. The representative of Peru stated that the text would need careful consideration from a technical and legal point of view. However, he was ready to join the consensus on the Chairman's text.

49. The Chairman adjourned the meeting for 30 minutes to allow informal consultations to be held on article 13. On resuming the meeting, he noted that no agreement had been reached on that article and informed the participants that he would consider that the draft optional protocol

would be adopted ad referendum. Informal consultations would continue until the formal adoption of the draft report in March 2000. In that regard and if need be, the Chairman would be asking for three meetings instead of one meeting, to allow for extensive discussion.

50. With regard to the adoption ad referendum of the draft optional protocol, the observer for Austria expressed her delegation's reservation and the need for her to seek instructions from her capital on the procedure adopted. The representative of the United Kingdom of Great Britain and Northern Ireland and the observer for Turkey sought clarification as to the status of the draft protocol.

51. The Chairman informed the participants that adoption ad referendum of the optional protocol would allow delegations to reconsider the text in March for the formal and final adoption of the report and the protocol annexed to it.

52. The observer for Australia, supported by the observer for Turkey submitted a motion that the meeting be suspended. The motion was accepted.

53. When the meeting was resumed, the representative of France reported on the consultations held to reach a consensus on article 13. Despite the assistance of many delegations in seeking a solution, he regretted that his delegation was not in a position to accept either article 13 as drafted or the alternative wording proposed by various delegations. However, he was in a position to join the consensus on the other articles of the protocol.

54. The observer for Austria urged the working group not to rush the adoption ad referendum of the draft protocol.

55. The representative of Guatemala, supported by the representatives of Argentina, Brazil, Colombia, Ecuador, El Salvador, Mexico, Peru and Venezuela, and the observer for Uruguay regretted that the working group had lost momentum and could not adopt the draft optional protocol at its present session. In that context, those delegations would reserve their right to reopen consideration of other articles of the optional protocol, such as the definition of the sale of children for the purpose of international crimes. In that regard, the representative of Brazil recalled that, for the sake of consensus, his delegation accepted not to include the definition of child sex tourism in the article on the definition. In view of the lack of flexibility of some delegations, his delegation might reconsider the need to include the definition of child sex tourism in the draft optional protocol, as already requested and reflected in the previous reports of the Working Group (E/CN.4/1999/74, paras. 59-60 and E/CN.4/1998/103, paras. 53-54). This proposal was supported by the representative of El Salvador.

56. The observer for Denmark requested the working group to include in the text of the draft optional protocol the alternative proposal on article 13 submitted by her delegation and that of Australia during the informal consultations. The representative of Peru objected to that proposal. He considered that, if the proposal of Denmark and Australia was reflected in the annex to the report, all the proposals submitted in informal meetings should also be reproduced therein.

57. The Chairman proposed setting aside article 13 and adopting the entire draft optional protocol with the exception of article 13, which read as follows:

"1. The present Protocol is open for signature by any State which is a party to the Convention or has signed it.

2. The present Protocol is subject to ratification or open to accession by any State. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations."

The proposal was not accepted as a number of delegations opposed it, despite the fact that other delegations supported it.

58. The representative of New Zealand, supported by the representative of the United Kingdom and the observer for Australia, expressed her regret that the working group could not adopt the draft protocol at the current session, as the text submitted was the closest to consensus. Her delegation would have been in a position to accept the text on article 13 as submitted or the alternative Danish/Australian proposal.

59. The representative of Guatemala said that unfortunately the efforts of the group as a whole had been thwarted because one delegation alone had opposed a consensus. In that connection she wondered whether that country's position represented a veto. Her views were shared by the representative of the United States of America. However, the observer for Turkey was not of the opinion that the burden of the failure of the negotiations should be put on only one delegation.

60. The representative of Germany did not consider that a veto had been used by any delegation. Article 13 was causing legal difficulties for various countries and the issue needed further discussion. He called for the continuation of efforts in a spirit of compromise, in particular at the next meeting of the working group, which would be convened in March for the formal adoption of the draft report. The representative of Venezuela also expressed the wish that there would be a positive development before the March meeting.

61. The Chairman stated that he was not as pessimistic as many delegations and that the working group had made a major step forward: most of the delegations which originally opposed the drafting of a protocol were ready to adopt the text he had submitted as the reflection of all participants' efforts to reach a consensus. The Chairman announced that the draft optional protocol was adopted ad referendum. He expressed his confidence for the future of the optional protocol and suggested that, in March, when the working group would have to adopt its report formally, only article 13 would be debated.

62. On 23 March 2000, as a result of the informal consultations he had carried out since February, the Chairman-Rapporteur submitted to the Working Group a compromise proposal including a new preambular paragraph, to become the tenth preambular paragraph, and new wording for article 13. This compromise proposal was based on a proposal submitted by the observers for Australia and Denmark during the informal consultations. The Working Group accepted the new compromise formula and the Chairman-Rapporteur announced that the optional protocol was adopted.

Annex

OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

The States Parties to the present Protocol,

Considering that in order further to achieve the purposes of the Convention on the Rights of the Child and the implementation of its provisions, especially articles 1, 11, 21, 32, 33, 34, 35 and 36, it would be appropriate to extend the measures that States Parties should undertake in order to guarantee the protection of the child from the sale of children, child prostitution and child pornography,

Considering also that the Convention on the Rights of the Child recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development,

Gravely concerned at the significant and increasing international traffic of children for the purpose of the sale of children, child prostitution and child pornography,

Deeply concerned at the widespread and continuing practice of sex tourism to which children are especially vulnerable, as it directly promotes the sale of children, child prostitution and child pornography,

Recognizing that a number of particularly vulnerable groups, including girl children, are at greater risk of sexual exploitation, and that girl children are disproportionately represented among the sexually exploited,

Concerned about the growing availability of child pornography on the Internet and other evolving technologies and recalling the International Conference on Combating Child Pornography on the Internet (Vienna, 1999) and, in particular, its conclusion calling for the worldwide criminalization of the production, distribution, exportation, transmission, importation, intentional possession and advertising of child pornography, and stressing the importance of closer cooperation and partnership between Governments and the Internet industry,

Believing that the elimination of the sale of children, child prostitution and child pornography will be facilitated by adopting a holistic approach addressing the contributing factors, including underdevelopment, poverty, economic disparities, inequitable socio-economic structure, dysfunctioning families, lack of education, urban-rural migration, gender discrimination, irresponsible adult sexual behaviour, harmful traditional practices, armed conflicts and trafficking of children,

Believing that efforts to raise public awareness are needed to reduce consumer demand for the sale of children, child prostitution and child pornography, and in the importance of strengthening global partnership among all actors, and of improving law enforcement at the national level,

Noting the provisions of international legal instruments relevant to the protection of children, including the Hague Convention on the Protection of Children and Co-operation with Respect to Intercountry Adoption, the Hague Convention on the Civil Aspects of Child Abduction, the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children and ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour,

Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists for the promotion and protection of the rights of the child,

Recognizing the importance of the implementation of the provisions of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography and the Declaration and Agenda for Action of the 1996 Stockholm Congress against the Commercial Sexual Exploitation of Children and the other relevant decisions and recommendations of pertinent international bodies,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Have agreed as follows:

Article 1

States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by this Protocol.

Article 2

For the purpose of the present Protocol:

SALE OF CHILDREN

(a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;

CHILD PROSTITUTION

(b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;

CHILD PORNOGRAPHY

(c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child, the dominant characteristic of which is depiction for a sexual purpose.

Article 3

1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether these offences are committed domestically or transnationally or on an individual or organized basis:

(a) In the context of sale of children as defined in article 2 (a):

(i) The offering, delivering, or accepting by whatever means a child for the purpose of:

Sexual exploitation of the child;

Transfer of organs of the child for profit;

Engagement of the child in forced labour;

(ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;

(b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2 (b); and

(c) Producing, distributing, disseminating, importing, exporting, offering, selling, or possessing for the above purposes, child pornography as defined in article 2 (c).

2. Subject to the provisions of a State Party's national law, the same shall apply to an attempt to commit any of these acts and to complicity or participation in any of these acts.

3. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

4. Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph 1 of this article. Subject to the legal principles of the State Party, this liability of legal persons may be criminal, civil, or administrative.

5. States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.

Article 4

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3.1, when the offences are commited in its territory or on board a ship or aircraft registered in that State.

2. Each State Party may take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3.1 in the following cases:

(a) When the alleged offender is a national of that State or a person who has his habitual residence in its territory;

(b) When the victim is a national of that State.

3. Each State Party shall also take such measures as may be necessary to establish its jurisdiction over the above-mentioned offences when the alleged offender is present in its territory and it does not extradite him to another State Party on the ground that the offence has been committed by one of its nationals.

4. This Protocol does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 5

1. The offences referred to in article 3.1 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties, and shall be included as extraditable offences in every extradition treaty subsequently concluded between them, in accordance with the conditions set forth in these treaties.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Protocol as a legal basis for extradition in respect of such offences. Extradition shall be subject to the conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 4.

5. If an extradition request is made with respect to an offence described in article 3.1 and if the requested State Party does not or will not extradite, on the basis of the nationality of the offender, that State shall take suitable measures to submit the case to its competent authorities for the purpose of prosecution.

Article 6

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 3.1, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

Article 7

States Parties shall, subject to the provisions of their national law:

(a) Take measures to provide for the seizure and confiscation, as appropriate, of:

(i) Goods such as materials, assets and other instrumentalities used to commit or facilitate offences under the present protocol;

(ii) Proceeds derived from such offences;

(b) Execute requests from another State Party for seizure or confiscation of goods or proceeds referred to in subparagraph (i);

(c) Take measures aimed at closing on a temporary or definitive basis premises used to commit such offences.

Article 8

1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:

(a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;

(b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;

(c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;

(d) Providing appropriate support services to child victims throughout the legal process;

(e) Protecting as appropriate the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;

(f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

(g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.

2 States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.

3 States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.

4 States Parties shall take measures to ensure appropriate training, in particular legal and psychological, for the persons who work with child victims of the offences prohibited under the present Protocol.

States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of child victims of such offences.

5 Nothing in this article shall be construed as prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

Article 9

1 States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes, to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable to these practices.

2 States Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol. In fulfilling their obligations under this article, States Parties shall encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level.

3 States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration, and their full physical and psychological recovery.

4. States Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.

5. States Parties shall take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the present Protocol.

Article 10

1. States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection , investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism.

States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations.

2. States Parties shall promote international cooperation to assist child victims for their physical and psychological recovery, social reintegration and repatriation.

3. States Parties shall promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the practices of sale, prostitution, pornography and child sex tourism.

4. States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.

Article 11

Nothing in the present Protocol shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

(a) The law of a State Party; or

(b) International law in force for that State.

Article 12

1. Each State Party shall submit, within two years following the entry into force of the Protocol for that State Party, a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol.

2. Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the Committee on the Rights of the Child in accordance with article 44 of the Convention any further information with respect to the implementation of the Protocol. Other States Parties to the Protocol shall submit a report every five years.

3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of this Protocol.

Article 13

1. The present Protocol is open for signature by any State which is a party to the Convention or has signed it.

2. The present Protocol is subject to ratification or open to accession by any State which is a party to the Convention or has signed it. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

Article 14

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after its entry into force, the present Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

Article 15

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States which have signed the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General of the United Nations.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Protocol in regard to any offence which occurs prior to the date at which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

Article 16

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour

such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments which they have accepted.

Article 17

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Protocol to all States Parties to the Convention and all States which have signed the Convention.